LIBRARY
SUPREME COURT, U. S.

(37973)

No. [redacted] 85

Office-Supreme Court, U.S.
FILED
APR 26 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

WMCA, INC., R. PETER STRAUS, JOSEPH DE MAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. McCAFFERTY,

Plaintiffs-Appellants,

and

PAUL R. SCREVANE, President of the City Council of the City of New York; EUGENE H. NICKERSON, County Executive, Nassau County; and MAURICE J. O'ROURKE, JAMES POWER, Commissioners, Board of Elections, New York City,

Supporting Defendants-Appellants,

against

JOHN P. LOMENZO, Secretary of State of the State of New York; LOUIS J. LEFKOWITZ, Attorney General of the State of New York; FRANCIS X. O'ROURKE, Chairman, Board of Supervisors, Westchester County; WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County; and JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City,

Defendants-Appellees,

and

JOHN H. HUGHES and LAWRENCE M. RULISON,

Intervening Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANTS' JOINT JURISDICTIONAL STATEMENT

LEO A. LARKIN,
Corporation Counsel of the City of New York,
Municipal Building,
New York, N. Y. 10007,
Attorney for Supporting Defendants-Appellants Screvane, Power and O'Rourke.

JACK B. WEINSTEIN,
County Attorney of Nassau County,
County Executive Building,
Mineola, New York.
Attorney for Supporting Defendant-Appellant Eugene H. Nickerson.

LEONARD B. SAND,
Robinson, Silverman, Pearce, Aronsohn & Sand,
230 Park Avenue,
New York 17, N. Y.

MAX GROSS,
Concourse Plaza Hotel,
Bronx 51, New York.

Attorneys for Plaintiffs-Appellants.

249 Press of Fremont Payne, Inc., 80 Washington St., N. Y.—BOwling Green 9-8153

INDEX

	PAGE
Opinion Below	1
Jurisdiction	2
United States Constitution, Federal Statutes and State Statute Involved	2
Questions Presented	2
Statement	3
Conclusion	5
Appendix A	1a
Appendix B	25a
Appendix C	152a

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. .....

WMCA, INC., *et al.*,

Appellants,

v.

JOHN P. LOMENZO, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANTS' JOINT JURISDICTIONAL STATEMENT

Opinion Below

The opinion of the three-judge district court has not been reported. A copy is set forth in Appendix A, *infra*. The prior opinions of that court, dismissing the complaint, are reported at 202 F. Supp. 741 and 208 F. Supp. 368. The opinion of this Court vacating the first judgment of dismissal and remanding the case for reconsideration in the light of *Baker* v. *Carr*, 369 U. S. 186, is reported at 370 U. S. 190. The opinion of this Court reversing the second judgment of dismissal and remanding the case for further proceedings consistent with the views stated therein and in the opinion in *Reynolds* v. *Sims*, 377 U. S. 533, is

reported at 377 U. S. 633. The prior opinion of this Court (*Hughes* v. *WMCA, Inc.*, decided February 1, 1965), affirming the judgment of the three-judge court dated July 27, 1964, is reported at 379 U. S. 694.

Jurisdiction

On January 26, 1965 the three-judge court entered an order declaring that the Reapportionment Compliance Act, Chapter 976 of the Laws of 1964, complies with that court's order dated July 27, 1964, and, as resettled by order dated February 16, 1965, expressly denying plaintiffs' application for injunctive relief against enforcement of the statute. The order of July 27, 1964 required the Legislature to enact into law not later than April 1, 1965 (since extended to May 5, 1965) "a valid apportionment scheme that is in compliance with the XIV Amendment of the United States Constitution." Separate notices of appeal to this Court were filed in the district court on February 25, 1965 by plaintiffs, supporting defendants Screvane, Power and O'Rourke and supporting defendant Nickerson. Jurisdiction of this Court to review on direct appeal the order of the three-judge court is conferred by 28 U.S.C. § 1253.

United States Constitution, Federal Statutes and State Statute Involved

The pertinent provisions of the United States Constitution; 42 U.S.C. §§ 1983 and 1988; 28 U.S.C. §§ 1343 (3), 2201 and 2202; and the pertinent provisions of Chapter 976 of New York Laws of 1964 are set forth in Appendix B, *infra*.

Questions Presented

The questions presented are:

1. Whether the district court erred in not considering or passing upon the question whether political gerryman-

dering can violate the Fourteenth Amendment of the United States Constitution.

2. Whether the district court erred in not admitting proof or hearing argument that the Reapportionment Compliance Act, Chapter 976 of the Laws of 1964, is invalid as violative of the Fourteenth Amendment of the United States Constitution in that:

(a) it establishes districts which are not convenient and compact and which depart in a substantial and unreasonable manner from natural geographic and political subdivision boundaries; and

(b) district lines were deliberately designed to, and were adopted in such a manner as to, and do in fact systematically minimize the voting power of some persons in the state and unduly increase and maximize the voting power of other persons in the state.

3. Whether the district court erred in not declaring that Chapter 976 of the Laws of 1964 is invalid as a violation of the Fourteenth Amendment of the United States Constitution.

Statement

This jurisdictional statement is filed by appellants in order to preserve their rights to challenge the validity of Chapter 976 of the Laws of 1964 as violative of the Fourteenth Amendment.

On December 22, 1964 the New York Legislature in extraordinary session enacted the Reapportionment Compliance Act, Chapter 976, § 1, known as "Plan A." Promptly thereafter it enacted three additional apportionment schemes as successive amendments to the Act: Chapter 977, as amended by Chapter 978 ("Plan B"); Chapter 979 ("Plan C"); and Chapter 981 ("Plan D").

The three-judge court by its order dated January 26, 1965 declared that Plans B, C and D were in conflict with

the Fourteenth Amendment and on February 23, 1965 notice of appeal from this portion of its order was filed by the State Attorney General.

The January 26, 1965 order of the three-judge court expressly did not pass upon appellants' claims that the four apportionment plans in the Reapportionment Compliance Act were invalid under Article III of the New York State Constitution, which contains certain apportionment and districting rules. On April 14, 1965 the New York Court of Appeals held all four plans invalid under state law for failure to comply with the constitutional requirement (Article III § 2) that the Assembly shall consist of 150 members. *Matter of Orans,* 15 NY 2d ——. A copy of the unrevised and uncorrected opinions in the Court of Appeals is set forth in Appendix C, *infra.*

The jurisdictional statement of the Attorney General, *et al.,* is due on the day this jurisdictional statement is to be filed. We expect to move thereafter to dismiss or affirm with respect to their appeal primarily on the ground that it presents no substantial federal question, especially in view of the subsequent holding of the highest State court that the statutes establishing Plans B, C and D are invalid under New York law.

In the event, however, that this Court should disagree with our contention and were to note probable jurisdiction of that appeal, we submit that the determination of the three-judge court that Plan A is valid under the Fourteenth Amendment is no less appropriate a subject for this Court's consideration.

We believe that the questions presented are clearly substantial. Gerrymandering, like malapportionment, can result in an apportionment scheme which "would operate to minimize or cancel out the voting strength of * * * political elements of the voting population." *Fortson* v. *Dorsey,* 379 U. S. 433, 439 (1965).

CONCLUSION

It is submitted that, the Court has jurisdiction and that, under the circumstances described, these appeals should be heard.

April 23, 1965.

Respectfully submitted,

LEONARD B. SAND,
Robinson, Silverman, Pearce,
Aronsohn & Sand,
230 Park Avenue,
New York 17, N. Y.

MAX GROSS,
Concourse Plaza Hotel,
Bronx 51, New York,

Attorneys for Plaintiffs-Appellants

LEO A. LARKIN,
Corporation Counsel
of the City of New York,
Municipal Building,
New York, N. Y. 10007,
Attorney for
Supporting Defendants-Appellants
Screvane, Power and O'Rourke

JACK B. WEINSTEIN,
County Attorney of Nassau County,
County Executive Building,
Mineola, New York,
Attorney for
Supporting Defendant-Appellant
Eugene H. Nickerson